
HOUSE BILL 2709

State of Washington

59th Legislature

2006 Regular Session

By Representatives Sump, Ahern, Buri, Haler, Serben, Condotta, Clements, Kretz, Schindler, Roach, Dunn, Buck, Orcutt, Woods, Ericks and McCune

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1 AN ACT Relating to sex offenders; amending RCW 9.94A.540,
2 9.94A.030, 9.94A.030, and 72.09.335; reenacting and amending RCW
3 9.94A.515; adding new sections to chapter 72.09 RCW; creating a new
4 section; prescribing penalties; providing an effective date; providing
5 an expiration date; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

8 (a) Rape is one of the most terrifying and demeaning criminal acts
9 an individual can perpetrate against another human being and the
10 personal trauma and anguish suffered by the victims of rape and by
11 their families can create devastating difficulties that often take a
12 lifetime to overcome;

13 (b) The pain and complications caused by rape are even more severe
14 where deadly weapons are involved, where the victim is kidnapped or
15 receives serious physical injuries, where the perpetrator has
16 wrongfully entered the building or vehicle where the victim is
17 situated, or where the victim is under the age of twelve; and

18 (c) The severity of punishment for those who commit rape should be

1 commensurate with the crime the perpetrators have forced upon their
2 victims and strict penalties for such cruel and humiliating violations
3 of a person's dignity and honor are both appropriate and just.

4 (2) It is therefore the intent of the legislature to ensure that
5 the penalty imposed for rape in the first degree and rape of a child in
6 the first degree is life in prison without the possibility of release
7 so that the victims of such rape will be better able to lead lives free
8 of fear knowing that the perpetrators of such crimes against them will
9 never be able to harm them again.

10 **Sec. 2.** RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are
11 each reenacted and amended to read as follows:

12 TABLE 2
13 CRIMES INCLUDED WITHIN
14 EACH SERIOUSNESS LEVEL

15	XVI	Aggravated Murder 1 (RCW
16		10.95.020)
17		<u>Rape 1 (RCW 9A.44.040)</u>
18		<u>Rape of a Child 1 (RCW 9A.44.073)</u>
19	XV	Homicide by abuse (RCW 9A.32.055)
20		Malicious explosion 1 (RCW
21		70.74.280(1))
22		Murder 1 (RCW 9A.32.030)
23	XIV	Murder 2 (RCW 9A.32.050)
24		Trafficking 1 (RCW 9A.40.100(1))
25	XIII	Malicious explosion 2 (RCW
26		70.74.280(2))
27		Malicious placement of an explosive 1
28		(RCW 70.74.270(1))
29	XII	Assault 1 (RCW 9A.36.011)
30		Assault of a Child 1 (RCW 9A.36.120)
31		Malicious placement of an imitation
32		device 1 (RCW 70.74.272(1)(a))
33		((Rape 1 (RCW 9A.44.040)
34		Rape of a Child 1 (RCW 9A.44.073)))
35		Trafficking 2 (RCW 9A.40.100(2))

1 XI Manslaughter 1 (RCW 9A.32.060)
2 Rape 2 (RCW 9A.44.050)
3 Rape of a Child 2 (RCW 9A.44.076)
4 X Child Molestation 1 (RCW 9A.44.083)
5 Indecent Liberties (with forcible
6 compulsion) (RCW
7 9A.44.100(1)(a))
8 Kidnapping 1 (RCW 9A.40.020)
9 Leading Organized Crime (RCW
10 9A.82.060(1)(a))
11 Malicious explosion 3 (RCW
12 70.74.280(3))
13 Sexually Violent Predator Escape
14 (RCW 9A.76.115)
15 IX Assault of a Child 2 (RCW 9A.36.130)
16 Explosive devices prohibited (RCW
17 70.74.180)
18 Hit and Run--Death (RCW
19 46.52.020(4)(a))
20 Homicide by Watercraft, by being
21 under the influence of intoxicating
22 liquor or any drug (RCW
23 79A.60.050)
24 Inciting Criminal Profiteering (RCW
25 9A.82.060(1)(b))
26 Malicious placement of an explosive 2
27 (RCW 70.74.270(2))
28 Robbery 1 (RCW 9A.56.200)
29 Sexual Exploitation (RCW 9.68A.040)
30 Vehicular Homicide, by being under
31 the influence of intoxicating liquor
32 or any drug (RCW 46.61.520)
33 VIII Arson 1 (RCW 9A.48.020)
34 Homicide by Watercraft, by the
35 operation of any vessel in a
36 reckless manner (RCW
37 79A.60.050)

1 Manslaughter 2 (RCW 9A.32.070)
2 Promoting Prostitution 1 (RCW
3 9A.88.070)
4 Theft of Ammonia (RCW 69.55.010)
5 Vehicular Homicide, by the operation
6 of any vehicle in a reckless
7 manner (RCW 46.61.520)
8 VII Burglary 1 (RCW 9A.52.020)
9 Child Molestation 2 (RCW 9A.44.086)
10 Civil Disorder Training (RCW
11 9A.48.120)
12 Dealing in depictions of minor
13 engaged in sexually explicit
14 conduct (RCW 9.68A.050)
15 Drive-by Shooting (RCW 9A.36.045)
16 Homicide by Watercraft, by disregard
17 for the safety of others (RCW
18 79A.60.050)
19 Indecent Liberties (without forcible
20 compulsion) (RCW 9A.44.100(1)
21 (b) and (c))
22 Introducing Contraband 1 (RCW
23 9A.76.140)
24 Malicious placement of an explosive 3
25 (RCW 70.74.270(3))
26 Negligently Causing Death By Use of
27 a Signal Preemption Device
28 (RCW 46.37.675)
29 Sending, bringing into state depictions
30 of minor engaged in sexually
31 explicit conduct (RCW
32 9.68A.060)
33 Unlawful Possession of a Firearm in
34 the first degree (RCW
35 9.41.040(1))
36 Use of a Machine Gun in Commission
37 of a Felony (RCW 9.41.225)

1 Vehicular Homicide, by disregard for
2 the safety of others (RCW
3 46.61.520)

4 VI Bail Jumping with Murder 1 (RCW
5 9A.76.170(3)(a))
6 Bribery (RCW 9A.68.010)
7 Incest 1 (RCW 9A.64.020(1))
8 Intimidating a Judge (RCW
9 9A.72.160)
10 Intimidating a Juror/Witness (RCW
11 9A.72.110, 9A.72.130)
12 Malicious placement of an imitation
13 device 2 (RCW 70.74.272(1)(b))
14 Rape of a Child 3 (RCW 9A.44.079)
15 Theft of a Firearm (RCW 9A.56.300)
16 Unlawful Storage of Ammonia (RCW
17 69.55.020)

18 V Abandonment of dependent person 1
19 (RCW 9A.42.060)
20 Advancing money or property for
21 extortionate extension of credit
22 (RCW 9A.82.030)
23 Bail Jumping with class A Felony
24 (RCW 9A.76.170(3)(b))
25 Child Molestation 3 (RCW 9A.44.089)
26 Criminal Mistreatment 1 (RCW
27 9A.42.020)
28 Custodial Sexual Misconduct 1 (RCW
29 9A.44.160)
30 Domestic Violence Court Order
31 Violation (RCW 10.99.040,
32 10.99.050, 26.09.300, 26.10.220,
33 26.26.138, 26.50.110, 26.52.070,
34 or 74.34.145)
35 Extortion 1 (RCW 9A.56.120)
36 Extortionate Extension of Credit
37 (RCW 9A.82.020)

1 Extortionate Means to Collect
2 Extensions of Credit (RCW
3 9A.82.040)
4 Incest 2 (RCW 9A.64.020(2))
5 Kidnapping 2 (RCW 9A.40.030)
6 Perjury 1 (RCW 9A.72.020)
7 Persistent prison misbehavior (RCW
8 9.94.070)
9 Possession of a Stolen Firearm (RCW
10 9A.56.310)
11 Rape 3 (RCW 9A.44.060)
12 Rendering Criminal Assistance 1
13 (RCW 9A.76.070)
14 Sexual Misconduct with a Minor 1
15 (RCW 9A.44.093)
16 Sexually Violating Human Remains
17 (RCW 9A.44.105)
18 Stalking (RCW 9A.46.110)
19 Taking Motor Vehicle Without
20 Permission 1 (RCW 9A.56.070)
21 IV Arson 2 (RCW 9A.48.030)
22 Assault 2 (RCW 9A.36.021)
23 Assault 3 (of a Peace Officer with a
24 Projectile Stun Gun) (RCW
25 9A.36.031(1)(h))
26 Assault by Watercraft (RCW
27 79A.60.060)
28 Bribing a Witness/Bribe Received by
29 Witness (RCW 9A.72.090,
30 9A.72.100)
31 Cheating 1 (RCW 9.46.1961)
32 Commercial Bribery (RCW
33 9A.68.060)
34 Counterfeiting (RCW 9.16.035(4))
35 Endangerment with a Controlled
36 Substance (RCW 9A.42.100)
37 Escape 1 (RCW 9A.76.110)

1 Hit and Run--Injury (RCW
2 46.52.020(4)(b))
3 Hit and Run with Vessel--Injury
4 Accident (RCW 79A.60.200(3))
5 Identity Theft 1 (RCW 9.35.020(2))
6 Indecent Exposure to Person Under
7 Age Fourteen (subsequent sex
8 offense) (RCW 9A.88.010)
9 Influencing Outcome of Sporting
10 Event (RCW 9A.82.070)
11 Malicious Harassment (RCW
12 9A.36.080)
13 Residential Burglary (RCW
14 9A.52.025)
15 Robbery 2 (RCW 9A.56.210)
16 Theft of Livestock 1 (RCW 9A.56.080)
17 Threats to Bomb (RCW 9.61.160)
18 Trafficking in Stolen Property 1 (RCW
19 9A.82.050)
20 Unlawful factoring of a credit card or
21 payment card transaction (RCW
22 9A.56.290(4)(b))
23 Unlawful transaction of health
24 coverage as a health care service
25 contractor (RCW 48.44.016(3))
26 Unlawful transaction of health
27 coverage as a health maintenance
28 organization (RCW 48.46.033(3))
29 Unlawful transaction of insurance
30 business (RCW 48.15.023(3))
31 Unlicensed practice as an insurance
32 professional (RCW 48.17.063(3))
33 Use of Proceeds of Criminal
34 Profiteering (RCW 9A.82.080 (1)
35 and (2))

1 Vehicular Assault, by being under the
2 influence of intoxicating liquor or
3 any drug, or by the operation or
4 driving of a vehicle in a reckless
5 manner (RCW 46.61.522)
6 Willful Failure to Return from
7 Furlough (RCW 72.66.060)
8 III Abandonment of dependent person 2
9 (RCW 9A.42.070)
10 Assault 3 (Except Assault 3 of a Peace
11 Officer With a Projectile Stun
12 Gun) (RCW 9A.36.031 except
13 subsection (1)(h))
14 Assault of a Child 3 (RCW 9A.36.140)
15 Bail Jumping with class B or C Felony
16 (RCW 9A.76.170(3)(c))
17 Burglary 2 (RCW 9A.52.030)
18 Communication with a Minor for
19 Immoral Purposes (RCW
20 9.68A.090)
21 Criminal Gang Intimidation (RCW
22 9A.46.120)
23 Criminal Mistreatment 2 (RCW
24 9A.42.030)
25 Custodial Assault (RCW 9A.36.100)
26 Cyberstalking (subsequent conviction
27 or threat of death) (RCW
28 9.61.260(3))
29 Escape 2 (RCW 9A.76.120)
30 Extortion 2 (RCW 9A.56.130)
31 Harassment (RCW 9A.46.020)
32 Intimidating a Public Servant (RCW
33 9A.76.180)
34 Introducing Contraband 2 (RCW
35 9A.76.150)
36 Malicious Injury to Railroad Property
37 (RCW 81.60.070)

1 Negligently Causing Substantial Bodily
2 Harm By Use of a Signal
3 Preemption Device (RCW
4 46.37.674)
5 Patronizing a Juvenile Prostitute
6 (RCW 9.68A.100)
7 Perjury 2 (RCW 9A.72.030)
8 Possession of Incendiary Device (RCW
9 9.40.120)
10 Possession of Machine Gun or Short-
11 Barreled Shotgun or Rifle (RCW
12 9.41.190)
13 Promoting Prostitution 2 (RCW
14 9A.88.080)
15 Securities Act violation (RCW
16 21.20.400)
17 Tampering with a Witness (RCW
18 9A.72.120)
19 Telephone Harassment (subsequent
20 conviction or threat of death)
21 (RCW 9.61.230(2))
22 Theft of Livestock 2 (RCW 9A.56.083)
23 Trafficking in Stolen Property 2 (RCW
24 9A.82.055)
25 Unlawful Imprisonment (RCW
26 9A.40.040)
27 Unlawful possession of firearm in the
28 second degree (RCW 9.41.040(2))
29 Vehicular Assault, by the operation or
30 driving of a vehicle with disregard
31 for the safety of others (RCW
32 46.61.522)
33 Willful Failure to Return from Work
34 Release (RCW 72.65.070)
35 II Computer Trespass 1 (RCW
36 9A.52.110)
37 Counterfeiting (RCW 9.16.035(3))

1 Escape from Community Custody
2 (RCW 72.09.310)
3 Health Care False Claims (RCW
4 48.80.030)
5 Identity Theft 2 (RCW 9.35.020(3))
6 Improperly Obtaining Financial
7 Information (RCW 9.35.010)
8 Malicious Mischief 1 (RCW
9 9A.48.070)
10 Possession of Stolen Property 1 (RCW
11 9A.56.150)
12 Theft 1 (RCW 9A.56.030)
13 Theft of Rental, Leased, or Lease-
14 purchased Property (valued at one
15 thousand five hundred dollars or
16 more) (RCW 9A.56.096(5)(a))
17 Trafficking in Insurance Claims (RCW
18 48.30A.015)
19 Unlawful factoring of a credit card or
20 payment card transaction (RCW
21 9A.56.290(4)(a))
22 Unlawful Practice of Law (RCW
23 2.48.180)
24 Unlicensed Practice of a Profession or
25 Business (RCW 18.130.190(7))
26 I Attempting to Elude a Pursuing Police
27 Vehicle (RCW 46.61.024)
28 False Verification for Welfare (RCW
29 74.08.055)
30 Forgery (RCW 9A.60.020)
31 Fraudulent Creation or Revocation of a
32 Mental Health Advance Directive
33 (RCW 9A.60.060)
34 Malicious Mischief 2 (RCW
35 9A.48.080)
36 Mineral Trespass (RCW 78.44.330)

1 Possession of Stolen Property 2 (RCW
2 9A.56.160)
3 Reckless Burning 1 (RCW 9A.48.040)
4 Taking Motor Vehicle Without
5 Permission 2 (RCW 9A.56.075)
6 Theft 2 (RCW 9A.56.040)
7 Theft of Rental, Leased, or Lease-
8 purchased Property (valued at two
9 hundred fifty dollars or more but
10 less than one thousand five
11 hundred dollars) (RCW
12 9A.56.096(5)(b))
13 Transaction of insurance business
14 beyond the scope of licensure
15 (RCW 48.17.063(4))
16 Unlawful Issuance of Checks or Drafts
17 (RCW 9A.56.060)
18 Unlawful Possession of Fictitious
19 Identification (RCW 9A.56.320)
20 Unlawful Possession of Instruments of
21 Financial Fraud (RCW
22 9A.56.320)
23 Unlawful Possession of Payment
24 Instruments (RCW 9A.56.320)
25 Unlawful Possession of a Personal
26 Identification Device (RCW
27 9A.56.320)
28 Unlawful Production of Payment
29 Instruments (RCW 9A.56.320)
30 Unlawful Trafficking in Food Stamps
31 (RCW 9.91.142)
32 Unlawful Use of Food Stamps (RCW
33 9.91.144)
34 Vehicle Prowl 1 (RCW 9A.52.095)

35 **Sec. 3.** RCW 9.94A.540 and 2005 c 437 s 2 are each amended to read
36 as follows:

1 (1) Except to the extent provided in subsection (3) of this
2 section, the following minimum terms of total confinement are mandatory
3 and shall not be varied or modified under RCW 9.94A.535:

4 (a) An offender convicted of the crime of murder in the first
5 degree shall be sentenced to a term of total confinement not less than
6 twenty years.

7 (b) An offender convicted of the crime of assault in the first
8 degree or assault of a child in the first degree where the offender
9 used force or means likely to result in death or intended to kill the
10 victim shall be sentenced to a term of total confinement not less than
11 five years.

12 (c) An offender convicted of the crime of rape in the first degree
13 or rape of a child in the first degree shall be sentenced to a term of
14 total confinement not less than (~~five years~~) life without the
15 possibility of release.

16 (d) An offender convicted of the crime of sexually violent predator
17 escape shall be sentenced to a minimum term of total confinement not
18 less than sixty months.

19 (2) During such minimum terms of total confinement, no offender
20 subject to the provisions of this section is eligible for community
21 custody, earned release time, furlough, home detention, partial
22 confinement, work crew, work release, or any other form of early
23 release authorized under RCW 9.94A.728, or any other form of authorized
24 leave of absence from the correctional facility while not in the direct
25 custody of a corrections officer. The provisions of this subsection
26 shall not apply: (a) In the case of an offender in need of emergency
27 medical treatment; (b) for the purpose of commitment to an inpatient
28 treatment facility in the case of an offender convicted of the crime of
29 rape in the first degree; or (c) for an extraordinary medical placement
30 when authorized under RCW 9.94A.728(4).

31 (3)(a) Subsection (1) of this section shall not be applied in
32 sentencing of juveniles tried as adults pursuant to RCW
33 13.04.030(1)(e)(i).

34 (b) This subsection (3) applies only to crimes committed on or
35 after July 24, 2005.

36 **Sec. 4.** RCW 9.94A.030 and 2005 c 436 s 1 are each amended to read
37 as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

3 (1) "Board" means the indeterminate sentence review board created
4 under chapter 9.95 RCW.

5 (2) "Collect," or any derivative thereof, "collect and remit," or
6 "collect and deliver," when used with reference to the department,
7 means that the department, either directly or through a collection
8 agreement authorized by RCW 9.94A.760, is responsible for monitoring
9 and enforcing the offender's sentence with regard to the legal
10 financial obligation, receiving payment thereof from the offender, and,
11 consistent with current law, delivering daily the entire payment to the
12 superior court clerk without depositing it in a departmental account.

13 (3) "Commission" means the sentencing guidelines commission.

14 (4) "Community corrections officer" means an employee of the
15 department who is responsible for carrying out specific duties in
16 supervision of sentenced offenders and monitoring of sentence
17 conditions.

18 (5) "Community custody" means that portion of an offender's
19 sentence of confinement in lieu of earned release time or imposed
20 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
21 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
22 community subject to controls placed on the offender's movement and
23 activities by the department. For offenders placed on community
24 custody for crimes committed on or after July 1, 2000, the department
25 shall assess the offender's risk of reoffense and may establish and
26 modify conditions of community custody, in addition to those imposed by
27 the court, based upon the risk to community safety.

28 (6) "Community custody range" means the minimum and maximum period
29 of community custody included as part of a sentence under RCW
30 9.94A.715, as established by the commission or the legislature under
31 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

32 (7) "Community placement" means that period during which the
33 offender is subject to the conditions of community custody and/or
34 postrelease supervision, which begins either upon completion of the
35 term of confinement (postrelease supervision) or at such time as the
36 offender is transferred to community custody in lieu of earned release.
37 Community placement may consist of entirely community custody, entirely
38 postrelease supervision, or a combination of the two.

1 (8) "Community protection zone" means the area within eight hundred
2 eighty feet of the facilities and grounds of a public or private
3 school.

4 (9) "Community restitution" means compulsory service, without
5 compensation, performed for the benefit of the community by the
6 offender.

7 (10) "Community supervision" means a period of time during which a
8 convicted offender is subject to crime-related prohibitions and other
9 sentence conditions imposed by a court pursuant to this chapter or RCW
10 16.52.200(6) or 46.61.524. Where the court finds that any offender has
11 a chemical dependency that has contributed to his or her offense, the
12 conditions of supervision may, subject to available resources, include
13 treatment. For purposes of the interstate compact for out-of-state
14 supervision of parolees and probationers, RCW 9.95.270, community
15 supervision is the functional equivalent of probation and should be
16 considered the same as probation by other states.

17 (11) "Confinement" means total or partial confinement.

18 (12) "Conviction" means an adjudication of guilt pursuant to Titles
19 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
20 acceptance of a plea of guilty.

21 (13) "Crime-related prohibition" means an order of a court
22 prohibiting conduct that directly relates to the circumstances of the
23 crime for which the offender has been convicted, and shall not be
24 construed to mean orders directing an offender affirmatively to
25 participate in rehabilitative programs or to otherwise perform
26 affirmative conduct. However, affirmative acts necessary to monitor
27 compliance with the order of a court may be required by the department.

28 (14) "Criminal history" means the list of a defendant's prior
29 convictions and juvenile adjudications, whether in this state, in
30 federal court, or elsewhere.

31 (a) The history shall include, where known, for each conviction (i)
32 whether the defendant has been placed on probation and the length and
33 terms thereof; and (ii) whether the defendant has been incarcerated and
34 the length of incarceration.

35 (b) A conviction may be removed from a defendant's criminal history
36 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
37 a similar out-of-state statute, or if the conviction has been vacated
38 pursuant to a governor's pardon.

1 (c) The determination of a defendant's criminal history is distinct
2 from the determination of an offender score. A prior conviction that
3 was not included in an offender score calculated pursuant to a former
4 version of the sentencing reform act remains part of the defendant's
5 criminal history.

6 (15) "Day fine" means a fine imposed by the sentencing court that
7 equals the difference between the offender's net daily income and the
8 reasonable obligations that the offender has for the support of the
9 offender and any dependents.

10 (16) "Day reporting" means a program of enhanced supervision
11 designed to monitor the offender's daily activities and compliance with
12 sentence conditions, and in which the offender is required to report
13 daily to a specific location designated by the department or the
14 sentencing court.

15 (17) "Department" means the department of corrections.

16 (18) "Determinate sentence" means a sentence that states with
17 exactitude the number of actual years, months, or days of total
18 confinement, of partial confinement, of community supervision, the
19 number of actual hours or days of community restitution work, or
20 dollars or terms of a legal financial obligation. The fact that an
21 offender through earned release can reduce the actual period of
22 confinement shall not affect the classification of the sentence as a
23 determinate sentence.

24 (19) "Disposable earnings" means that part of the earnings of an
25 offender remaining after the deduction from those earnings of any
26 amount required by law to be withheld. For the purposes of this
27 definition, "earnings" means compensation paid or payable for personal
28 services, whether denominated as wages, salary, commission, bonuses, or
29 otherwise, and, notwithstanding any other provision of law making the
30 payments exempt from garnishment, attachment, or other process to
31 satisfy a court-ordered legal financial obligation, specifically
32 includes periodic payments pursuant to pension or retirement programs,
33 or insurance policies of any type, but does not include payments made
34 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
35 or Title 74 RCW.

36 (20) "Drug offender sentencing alternative" is a sentencing option
37 available to persons convicted of a felony offense other than a violent

1 offense or a sex offense and who are eligible for the option under RCW
2 9.94A.660.

3 (21) "Drug offense" means:

4 (a) Any felony violation of chapter 69.50 RCW except possession of
5 a controlled substance (RCW 69.50.4013) or forged prescription for a
6 controlled substance (RCW 69.50.403);

7 (b) Any offense defined as a felony under federal law that relates
8 to the possession, manufacture, distribution, or transportation of a
9 controlled substance; or

10 (c) Any out-of-state conviction for an offense that under the laws
11 of this state would be a felony classified as a drug offense under (a)
12 of this subsection.

13 (22) "Earned release" means earned release from confinement as
14 provided in RCW 9.94A.728.

15 (23) "Escape" means:

16 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
17 first degree (RCW 9A.76.110), escape in the second degree (RCW
18 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
19 willful failure to return from work release (RCW 72.65.070), or willful
20 failure to be available for supervision by the department while in
21 community custody (RCW 72.09.310); or

22 (b) Any federal or out-of-state conviction for an offense that
23 under the laws of this state would be a felony classified as an escape
24 under (a) of this subsection.

25 (24) "Felony traffic offense" means:

26 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
27 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
28 and-run injury-accident (RCW 46.52.020(4)); or

29 (b) Any federal or out-of-state conviction for an offense that
30 under the laws of this state would be a felony classified as a felony
31 traffic offense under (a) of this subsection.

32 (25) "Fine" means a specific sum of money ordered by the sentencing
33 court to be paid by the offender to the court over a specific period of
34 time.

35 (26) "First-time offender" means any person who has no prior
36 convictions for a felony and is eligible for the first-time offender
37 waiver under RCW 9.94A.650.

1 (27) "Home detention" means a program of partial confinement
2 available to offenders wherein the offender is confined in a private
3 residence subject to electronic surveillance.

4 (28) "Legal financial obligation" means a sum of money that is
5 ordered by a superior court of the state of Washington for legal
6 financial obligations which may include restitution to the victim,
7 statutorily imposed crime victims' compensation fees as assessed
8 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
9 court-appointed attorneys' fees, and costs of defense, fines, and any
10 other financial obligation that is assessed to the offender as a result
11 of a felony conviction. Upon conviction for vehicular assault while
12 under the influence of intoxicating liquor or any drug, RCW
13 46.61.522(1)(b), or vehicular homicide while under the influence of
14 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
15 obligations may also include payment to a public agency of the expense
16 of an emergency response to the incident resulting in the conviction,
17 subject to RCW 38.52.430.

18 (29) "Most serious offense" means any of the following felonies or
19 a felony attempt to commit any of the following felonies:

20 (a) Any felony defined under any law as a class A felony or
21 criminal solicitation of or criminal conspiracy to commit a class A
22 felony;

23 (b) Assault in the second degree;

24 (c) Assault of a child in the second degree;

25 (d) Child molestation in the second degree;

26 (e) Controlled substance homicide;

27 (f) Extortion in the first degree;

28 (g) Incest when committed against a child under age fourteen;

29 (h) Indecent liberties;

30 (i) Kidnapping in the second degree;

31 (j) Leading organized crime;

32 (k) Manslaughter in the first degree;

33 (l) Manslaughter in the second degree;

34 (m) Promoting prostitution in the first degree;

35 (n) Rape in the third degree;

36 (o) Robbery in the second degree;

37 (p) Sexual exploitation;

1 (q) Vehicular assault, when caused by the operation or driving of
2 a vehicle by a person while under the influence of intoxicating liquor
3 or any drug or by the operation or driving of a vehicle in a reckless
4 manner;

5 (r) Vehicular homicide, when proximately caused by the driving of
6 any vehicle by any person while under the influence of intoxicating
7 liquor or any drug as defined by RCW 46.61.502, or by the operation of
8 any vehicle in a reckless manner;

9 (s) Any other class B felony offense with a finding of sexual
10 motivation;

11 (t) Any other felony with a deadly weapon verdict under RCW
12 9.94A.602;

13 (u) Any felony offense in effect at any time prior to December 2,
14 1993, that is comparable to a most serious offense under this
15 subsection, or any federal or out-of-state conviction for an offense
16 that under the laws of this state would be a felony classified as a
17 most serious offense under this subsection;

18 (v)(i) A prior conviction for indecent liberties under RCW
19 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
20 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
21 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
22 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

23 (ii) A prior conviction for indecent liberties under RCW
24 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
25 if: (A) The crime was committed against a child under the age of
26 fourteen; or (B) the relationship between the victim and perpetrator is
27 included in the definition of indecent liberties under RCW
28 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
29 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
30 through July 27, 1997.

31 (30) "Nonviolent offense" means an offense which is not a violent
32 offense.

33 (31) "Offender" means a person who has committed a felony
34 established by state law and is eighteen years of age or older or is
35 less than eighteen years of age but whose case is under superior court
36 jurisdiction under RCW 13.04.030 or has been transferred by the
37 appropriate juvenile court to a criminal court pursuant to RCW

1 13.40.110. Throughout this chapter, the terms "offender" and
2 "defendant" are used interchangeably.

3 (32) "Partial confinement" means confinement for no more than one
4 year in a facility or institution operated or utilized under contract
5 by the state or any other unit of government, or, if home detention or
6 work crew has been ordered by the court, in an approved residence, for
7 a substantial portion of each day with the balance of the day spent in
8 the community. Partial confinement includes work release, home
9 detention, work crew, and a combination of work crew and home
10 detention.

11 (33) "Persistent offender" is an offender who:

12 (a)(i) Has been convicted in this state of any felony considered a
13 most serious offense; and

14 (ii) Has, before the commission of the offense under (a) of this
15 subsection, been convicted as an offender on at least two separate
16 occasions, whether in this state or elsewhere, of felonies that under
17 the laws of this state would be considered most serious offenses and
18 would be included in the offender score under RCW 9.94A.525; provided
19 that of the two or more previous convictions, at least one conviction
20 must have occurred before the commission of any of the other most
21 serious offenses for which the offender was previously convicted; or

22 (b)(i) Has been convicted of: (A) (~~Rape in the first degree, rape~~
23 ~~of a child in the first degree,~~) Child molestation in the first
24 degree, rape in the second degree, rape of a child in the second
25 degree, or indecent liberties by forcible compulsion; (B) any of the
26 following offenses with a finding of sexual motivation: Murder in the
27 first degree, murder in the second degree, homicide by abuse,
28 kidnapping in the first degree, kidnapping in the second degree,
29 assault in the first degree, assault in the second degree, assault of
30 a child in the first degree, or burglary in the first degree; or (C) an
31 attempt to commit any crime listed in this subsection (33)(b)(i); and

32 (ii) Has, before the commission of the offense under (b)(i) of this
33 subsection, been convicted as an offender on at least one occasion,
34 whether in this state or elsewhere, of an offense listed in (b)(i) of
35 this subsection, rape in the first degree, rape of a child in the first
36 degree, or any federal or out-of-state offense or offense under prior
37 Washington law that is comparable to the offenses listed in (b)(i) of
38 this subsection, rape in the first degree, or rape of a child in the

1 first degree. (~~A conviction for rape of a child in the first degree~~
2 ~~constitutes a conviction under (b)(i) of this subsection only when the~~
3 ~~offender was sixteen years of age or older when the offender committed~~
4 ~~the offense.~~) A conviction for rape of a child in the second degree
5 constitutes a conviction under (b)(i) of this subsection only when the
6 offender was eighteen years of age or older when the offender committed
7 the offense.

8 (34) "Postrelease supervision" is that portion of an offender's
9 community placement that is not community custody.

10 (35) "Private school" means a school regulated under chapter
11 28A.195 or 28A.205 RCW.

12 (36) "Public school" has the same meaning as in RCW 28A.150.010.

13 (37) "Restitution" means a specific sum of money ordered by the
14 sentencing court to be paid by the offender to the court over a
15 specified period of time as payment of damages. The sum may include
16 both public and private costs.

17 (38) "Risk assessment" means the application of an objective
18 instrument supported by research and adopted by the department for the
19 purpose of assessing an offender's risk of reoffense, taking into
20 consideration the nature of the harm done by the offender, place and
21 circumstances of the offender related to risk, the offender's
22 relationship to any victim, and any information provided to the
23 department by victims. The results of a risk assessment shall not be
24 based on unconfirmed or unconfirmable allegations.

25 (39) "Serious traffic offense" means:

26 (a) Driving while under the influence of intoxicating liquor or any
27 drug (RCW 46.61.502), actual physical control while under the influence
28 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
29 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
30 or

31 (b) Any federal, out-of-state, county, or municipal conviction for
32 an offense that under the laws of this state would be classified as a
33 serious traffic offense under (a) of this subsection.

34 (40) "Serious violent offense" is a subcategory of violent offense
35 and means:

36 (a)(i) Murder in the first degree;

37 (ii) Homicide by abuse;

38 (iii) Murder in the second degree;

1 (iv) Manslaughter in the first degree;
2 (v) Assault in the first degree;
3 (vi) Kidnapping in the first degree;
4 (vii) Rape in the first degree;
5 (viii) Assault of a child in the first degree; or
6 (ix) An attempt, criminal solicitation, or criminal conspiracy to
7 commit one of these felonies; or
8 (b) Any federal or out-of-state conviction for an offense that
9 under the laws of this state would be a felony classified as a serious
10 violent offense under (a) of this subsection.
11 (41) "Sex offense" means:
12 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
13 RCW 9A.44.130(11);
14 (ii) A violation of RCW 9A.64.020;
15 (iii) A felony that is a violation of chapter 9.68A RCW other than
16 RCW 9.68A.070 or 9.68A.080; or
17 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
18 criminal solicitation, or criminal conspiracy to commit such crimes;
19 (b) Any conviction for a felony offense in effect at any time prior
20 to July 1, 1976, that is comparable to a felony classified as a sex
21 offense in (a) of this subsection;
22 (c) A felony with a finding of sexual motivation under RCW
23 9.94A.835 or 13.40.135; or
24 (d) Any federal or out-of-state conviction for an offense that
25 under the laws of this state would be a felony classified as a sex
26 offense under (a) of this subsection.
27 (42) "Sexual motivation" means that one of the purposes for which
28 the defendant committed the crime was for the purpose of his or her
29 sexual gratification.
30 (43) "Standard sentence range" means the sentencing court's
31 discretionary range in imposing a nonappealable sentence.
32 (44) "Statutory maximum sentence" means the maximum length of time
33 for which an offender may be confined as punishment for a crime as
34 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
35 crime, or other statute defining the maximum penalty for a crime.
36 (45) "Total confinement" means confinement inside the physical
37 boundaries of a facility or institution operated or utilized under

1 contract by the state or any other unit of government for twenty-four
2 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

3 (46) "Transition training" means written and verbal instructions
4 and assistance provided by the department to the offender during the
5 two weeks prior to the offender's successful completion of the work
6 ethic camp program. The transition training shall include instructions
7 in the offender's requirements and obligations during the offender's
8 period of community custody.

9 (47) "Victim" means any person who has sustained emotional,
10 psychological, physical, or financial injury to person or property as
11 a direct result of the crime charged.

12 (48) "Violent offense" means:

13 (a) Any of the following felonies:

14 (i) Any felony defined under any law as a class A felony or an
15 attempt to commit a class A felony;

16 (ii) Criminal solicitation of or criminal conspiracy to commit a
17 class A felony;

18 (iii) Manslaughter in the first degree;

19 (iv) Manslaughter in the second degree;

20 (v) Indecent liberties if committed by forcible compulsion;

21 (vi) Kidnapping in the second degree;

22 (vii) Arson in the second degree;

23 (viii) Assault in the second degree;

24 (ix) Assault of a child in the second degree;

25 (x) Extortion in the first degree;

26 (xi) Robbery in the second degree;

27 (xii) Drive-by shooting;

28 (xiii) Vehicular assault, when caused by the operation or driving
29 of a vehicle by a person while under the influence of intoxicating
30 liquor or any drug or by the operation or driving of a vehicle in a
31 reckless manner; and

32 (xiv) Vehicular homicide, when proximately caused by the driving of
33 any vehicle by any person while under the influence of intoxicating
34 liquor or any drug as defined by RCW 46.61.502, or by the operation of
35 any vehicle in a reckless manner;

36 (b) Any conviction for a felony offense in effect at any time prior
37 to July 1, 1976, that is comparable to a felony classified as a violent
38 offense in (a) of this subsection; and

1 (c) Any federal or out-of-state conviction for an offense that
2 under the laws of this state would be a felony classified as a violent
3 offense under (a) or (b) of this subsection.

4 (49) "Work crew" means a program of partial confinement consisting
5 of civic improvement tasks for the benefit of the community that
6 complies with RCW 9.94A.725.

7 (50) "Work ethic camp" means an alternative incarceration program
8 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
9 the cost of corrections by requiring offenders to complete a
10 comprehensive array of real-world job and vocational experiences,
11 character-building work ethics training, life management skills
12 development, substance abuse rehabilitation, counseling, literacy
13 training, and basic adult education.

14 (51) "Work release" means a program of partial confinement
15 available to offenders who are employed or engaged as a student in a
16 regular course of study at school.

17 **Sec. 5.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
18 as follows:

19 Unless the context clearly requires otherwise, the definitions in
20 this section apply throughout this chapter.

21 (1) "Board" means the indeterminate sentence review board created
22 under chapter 9.95 RCW.

23 (2) "Collect," or any derivative thereof, "collect and remit," or
24 "collect and deliver," when used with reference to the department,
25 means that the department, either directly or through a collection
26 agreement authorized by RCW 9.94A.760, is responsible for monitoring
27 and enforcing the offender's sentence with regard to the legal
28 financial obligation, receiving payment thereof from the offender, and,
29 consistent with current law, delivering daily the entire payment to the
30 superior court clerk without depositing it in a departmental account.

31 (3) "Commission" means the sentencing guidelines commission.

32 (4) "Community corrections officer" means an employee of the
33 department who is responsible for carrying out specific duties in
34 supervision of sentenced offenders and monitoring of sentence
35 conditions.

36 (5) "Community custody" means that portion of an offender's
37 sentence of confinement in lieu of earned release time or imposed

1 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
2 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
3 community subject to controls placed on the offender's movement and
4 activities by the department. For offenders placed on community
5 custody for crimes committed on or after July 1, 2000, the department
6 shall assess the offender's risk of reoffense and may establish and
7 modify conditions of community custody, in addition to those imposed by
8 the court, based upon the risk to community safety.

9 (6) "Community custody range" means the minimum and maximum period
10 of community custody included as part of a sentence under RCW
11 9.94A.715, as established by the commission or the legislature under
12 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

13 (7) "Community placement" means that period during which the
14 offender is subject to the conditions of community custody and/or
15 postrelease supervision, which begins either upon completion of the
16 term of confinement (postrelease supervision) or at such time as the
17 offender is transferred to community custody in lieu of earned release.
18 Community placement may consist of entirely community custody, entirely
19 postrelease supervision, or a combination of the two.

20 (8) "Community restitution" means compulsory service, without
21 compensation, performed for the benefit of the community by the
22 offender.

23 (9) "Community supervision" means a period of time during which a
24 convicted offender is subject to crime-related prohibitions and other
25 sentence conditions imposed by a court pursuant to this chapter or RCW
26 16.52.200(6) or 46.61.524. Where the court finds that any offender has
27 a chemical dependency that has contributed to his or her offense, the
28 conditions of supervision may, subject to available resources, include
29 treatment. For purposes of the interstate compact for out-of-state
30 supervision of parolees and probationers, RCW 9.95.270, community
31 supervision is the functional equivalent of probation and should be
32 considered the same as probation by other states.

33 (10) "Confinement" means total or partial confinement.

34 (11) "Conviction" means an adjudication of guilt pursuant to Titles
35 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
36 acceptance of a plea of guilty.

37 (12) "Crime-related prohibition" means an order of a court
38 prohibiting conduct that directly relates to the circumstances of the

1 crime for which the offender has been convicted, and shall not be
2 construed to mean orders directing an offender affirmatively to
3 participate in rehabilitative programs or to otherwise perform
4 affirmative conduct. However, affirmative acts necessary to monitor
5 compliance with the order of a court may be required by the department.

6 (13) "Criminal history" means the list of a defendant's prior
7 convictions and juvenile adjudications, whether in this state, in
8 federal court, or elsewhere.

9 (a) The history shall include, where known, for each conviction (i)
10 whether the defendant has been placed on probation and the length and
11 terms thereof; and (ii) whether the defendant has been incarcerated and
12 the length of incarceration.

13 (b) A conviction may be removed from a defendant's criminal history
14 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
15 a similar out-of-state statute, or if the conviction has been vacated
16 pursuant to a governor's pardon.

17 (c) The determination of a defendant's criminal history is distinct
18 from the determination of an offender score. A prior conviction that
19 was not included in an offender score calculated pursuant to a former
20 version of the sentencing reform act remains part of the defendant's
21 criminal history.

22 (14) "Day fine" means a fine imposed by the sentencing court that
23 equals the difference between the offender's net daily income and the
24 reasonable obligations that the offender has for the support of the
25 offender and any dependents.

26 (15) "Day reporting" means a program of enhanced supervision
27 designed to monitor the offender's daily activities and compliance with
28 sentence conditions, and in which the offender is required to report
29 daily to a specific location designated by the department or the
30 sentencing court.

31 (16) "Department" means the department of corrections.

32 (17) "Determinate sentence" means a sentence that states with
33 exactitude the number of actual years, months, or days of total
34 confinement, of partial confinement, of community supervision, the
35 number of actual hours or days of community restitution work, or
36 dollars or terms of a legal financial obligation. The fact that an
37 offender through earned release can reduce the actual period of

1 confinement shall not affect the classification of the sentence as a
2 determinate sentence.

3 (18) "Disposable earnings" means that part of the earnings of an
4 offender remaining after the deduction from those earnings of any
5 amount required by law to be withheld. For the purposes of this
6 definition, "earnings" means compensation paid or payable for personal
7 services, whether denominated as wages, salary, commission, bonuses, or
8 otherwise, and, notwithstanding any other provision of law making the
9 payments exempt from garnishment, attachment, or other process to
10 satisfy a court-ordered legal financial obligation, specifically
11 includes periodic payments pursuant to pension or retirement programs,
12 or insurance policies of any type, but does not include payments made
13 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
14 or Title 74 RCW.

15 (19) "Drug offender sentencing alternative" is a sentencing option
16 available to persons convicted of a felony offense other than a violent
17 offense or a sex offense and who are eligible for the option under RCW
18 9.94A.660.

19 (20) "Drug offense" means:

20 (a) Any felony violation of chapter 69.50 RCW except possession of
21 a controlled substance (RCW 69.50.4013) or forged prescription for a
22 controlled substance (RCW 69.50.403);

23 (b) Any offense defined as a felony under federal law that relates
24 to the possession, manufacture, distribution, or transportation of a
25 controlled substance; or

26 (c) Any out-of-state conviction for an offense that under the laws
27 of this state would be a felony classified as a drug offense under (a)
28 of this subsection.

29 (21) "Earned release" means earned release from confinement as
30 provided in RCW 9.94A.728.

31 (22) "Escape" means:

32 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
33 first degree (RCW 9A.76.110), escape in the second degree (RCW
34 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
35 willful failure to return from work release (RCW 72.65.070), or willful
36 failure to be available for supervision by the department while in
37 community custody (RCW 72.09.310); or

1 (b) Any federal or out-of-state conviction for an offense that
2 under the laws of this state would be a felony classified as an escape
3 under (a) of this subsection.

4 (23) "Felony traffic offense" means:

5 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
6 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
7 and-run injury-accident (RCW 46.52.020(4)); or

8 (b) Any federal or out-of-state conviction for an offense that
9 under the laws of this state would be a felony classified as a felony
10 traffic offense under (a) of this subsection.

11 (24) "Fine" means a specific sum of money ordered by the sentencing
12 court to be paid by the offender to the court over a specific period of
13 time.

14 (25) "First-time offender" means any person who has no prior
15 convictions for a felony and is eligible for the first-time offender
16 waiver under RCW 9.94A.650.

17 (26) "Home detention" means a program of partial confinement
18 available to offenders wherein the offender is confined in a private
19 residence subject to electronic surveillance.

20 (27) "Legal financial obligation" means a sum of money that is
21 ordered by a superior court of the state of Washington for legal
22 financial obligations which may include restitution to the victim,
23 statutorily imposed crime victims' compensation fees as assessed
24 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
25 court-appointed attorneys' fees, and costs of defense, fines, and any
26 other financial obligation that is assessed to the offender as a result
27 of a felony conviction. Upon conviction for vehicular assault while
28 under the influence of intoxicating liquor or any drug, RCW
29 46.61.522(1)(b), or vehicular homicide while under the influence of
30 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
31 obligations may also include payment to a public agency of the expense
32 of an emergency response to the incident resulting in the conviction,
33 subject to RCW 38.52.430.

34 (28) "Most serious offense" means any of the following felonies or
35 a felony attempt to commit any of the following felonies:

36 (a) Any felony defined under any law as a class A felony or
37 criminal solicitation of or criminal conspiracy to commit a class A
38 felony;

- 1 (b) Assault in the second degree;
- 2 (c) Assault of a child in the second degree;
- 3 (d) Child molestation in the second degree;
- 4 (e) Controlled substance homicide;
- 5 (f) Extortion in the first degree;
- 6 (g) Incest when committed against a child under age fourteen;
- 7 (h) Indecent liberties;
- 8 (i) Kidnapping in the second degree;
- 9 (j) Leading organized crime;
- 10 (k) Manslaughter in the first degree;
- 11 (l) Manslaughter in the second degree;
- 12 (m) Promoting prostitution in the first degree;
- 13 (n) Rape in the third degree;
- 14 (o) Robbery in the second degree;
- 15 (p) Sexual exploitation;
- 16 (q) Vehicular assault, when caused by the operation or driving of
17 a vehicle by a person while under the influence of intoxicating liquor
18 or any drug or by the operation or driving of a vehicle in a reckless
19 manner;
- 20 (r) Vehicular homicide, when proximately caused by the driving of
21 any vehicle by any person while under the influence of intoxicating
22 liquor or any drug as defined by RCW 46.61.502, or by the operation of
23 any vehicle in a reckless manner;
- 24 (s) Any other class B felony offense with a finding of sexual
25 motivation;
- 26 (t) Any other felony with a deadly weapon verdict under RCW
27 9.94A.602;
- 28 (u) Any felony offense in effect at any time prior to December 2,
29 1993, that is comparable to a most serious offense under this
30 subsection, or any federal or out-of-state conviction for an offense
31 that under the laws of this state would be a felony classified as a
32 most serious offense under this subsection;
- 33 (v)(i) A prior conviction for indecent liberties under RCW
34 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
35 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
36 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
37 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

1 (ii) A prior conviction for indecent liberties under RCW
2 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
3 if: (A) The crime was committed against a child under the age of
4 fourteen; or (B) the relationship between the victim and perpetrator is
5 included in the definition of indecent liberties under RCW
6 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
7 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
8 through July 27, 1997.

9 (29) "Nonviolent offense" means an offense which is not a violent
10 offense.

11 (30) "Offender" means a person who has committed a felony
12 established by state law and is eighteen years of age or older or is
13 less than eighteen years of age but whose case is under superior court
14 jurisdiction under RCW 13.04.030 or has been transferred by the
15 appropriate juvenile court to a criminal court pursuant to RCW
16 13.40.110. Throughout this chapter, the terms "offender" and
17 "defendant" are used interchangeably.

18 (31) "Partial confinement" means confinement for no more than one
19 year in a facility or institution operated or utilized under contract
20 by the state or any other unit of government, or, if home detention or
21 work crew has been ordered by the court, in an approved residence, for
22 a substantial portion of each day with the balance of the day spent in
23 the community. Partial confinement includes work release, home
24 detention, work crew, and a combination of work crew and home
25 detention.

26 (32) "Persistent offender" is an offender who:

27 (a)(i) Has been convicted in this state of any felony considered a
28 most serious offense; and

29 (ii) Has, before the commission of the offense under (a) of this
30 subsection, been convicted as an offender on at least two separate
31 occasions, whether in this state or elsewhere, of felonies that under
32 the laws of this state would be considered most serious offenses and
33 would be included in the offender score under RCW 9.94A.525; provided
34 that of the two or more previous convictions, at least one conviction
35 must have occurred before the commission of any of the other most
36 serious offenses for which the offender was previously convicted; or

37 (b)(i) Has been convicted of: (A) (~~Rape in the first degree, rape~~
38 ~~of a child in the first degree,~~) Child molestation in the first

1 degree, rape in the second degree, rape of a child in the second
2 degree, or indecent liberties by forcible compulsion; (B) any of the
3 following offenses with a finding of sexual motivation: Murder in the
4 first degree, murder in the second degree, homicide by abuse,
5 kidnapping in the first degree, kidnapping in the second degree,
6 assault in the first degree, assault in the second degree, assault of
7 a child in the first degree, or burglary in the first degree; or (C) an
8 attempt to commit any crime listed in this subsection (32)(b)(i); and

9 (ii) Has, before the commission of the offense under (b)(i) of this
10 subsection, been convicted as an offender on at least one occasion,
11 whether in this state or elsewhere, of an offense listed in (b)(i) of
12 this subsection, rape in the first degree, rape of a child in the first
13 degree, or any federal or out-of-state offense or offense under prior
14 Washington law that is comparable to the offenses listed in (b)(i) of
15 this subsection, rape in the first degree, or rape of a child in the
16 first degree. (~~(A conviction for rape of a child in the first degree~~
17 ~~constitutes a conviction under (b)(i) of this subsection only when the~~
18 ~~offender was sixteen years of age or older when the offender committed~~
19 ~~the offense.)) A conviction for rape of a child in the second degree
20 constitutes a conviction under (b)(i) of this subsection only when the
21 offender was eighteen years of age or older when the offender committed
22 the offense.~~

23 (33) "Postrelease supervision" is that portion of an offender's
24 community placement that is not community custody.

25 (34) "Restitution" means a specific sum of money ordered by the
26 sentencing court to be paid by the offender to the court over a
27 specified period of time as payment of damages. The sum may include
28 both public and private costs.

29 (35) "Risk assessment" means the application of an objective
30 instrument supported by research and adopted by the department for the
31 purpose of assessing an offender's risk of reoffense, taking into
32 consideration the nature of the harm done by the offender, place and
33 circumstances of the offender related to risk, the offender's
34 relationship to any victim, and any information provided to the
35 department by victims. The results of a risk assessment shall not be
36 based on unconfirmed or unconfirmable allegations.

37 (36) "Serious traffic offense" means:

1 (a) Driving while under the influence of intoxicating liquor or any
2 drug (RCW 46.61.502), actual physical control while under the influence
3 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
4 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
5 or

6 (b) Any federal, out-of-state, county, or municipal conviction for
7 an offense that under the laws of this state would be classified as a
8 serious traffic offense under (a) of this subsection.

9 (37) "Serious violent offense" is a subcategory of violent offense
10 and means:

11 (a)(i) Murder in the first degree;

12 (ii) Homicide by abuse;

13 (iii) Murder in the second degree;

14 (iv) Manslaughter in the first degree;

15 (v) Assault in the first degree;

16 (vi) Kidnapping in the first degree;

17 (vii) Rape in the first degree;

18 (viii) Assault of a child in the first degree; or

19 (ix) An attempt, criminal solicitation, or criminal conspiracy to
20 commit one of these felonies; or

21 (b) Any federal or out-of-state conviction for an offense that
22 under the laws of this state would be a felony classified as a serious
23 violent offense under (a) of this subsection.

24 (38) "Sex offense" means:

25 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
26 RCW 9A.44.130(11);

27 (ii) A violation of RCW 9A.64.020;

28 (iii) A felony that is a violation of chapter 9.68A RCW other than
29 RCW 9.68A.070 or 9.68A.080; or

30 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
31 criminal solicitation, or criminal conspiracy to commit such crimes;

32 (b) Any conviction for a felony offense in effect at any time prior
33 to July 1, 1976, that is comparable to a felony classified as a sex
34 offense in (a) of this subsection;

35 (c) A felony with a finding of sexual motivation under RCW
36 9.94A.835 or 13.40.135; or

37 (d) Any federal or out-of-state conviction for an offense that

1 under the laws of this state would be a felony classified as a sex
2 offense under (a) of this subsection.

3 (39) "Sexual motivation" means that one of the purposes for which
4 the defendant committed the crime was for the purpose of his or her
5 sexual gratification.

6 (40) "Standard sentence range" means the sentencing court's
7 discretionary range in imposing a nonappealable sentence.

8 (41) "Statutory maximum sentence" means the maximum length of time
9 for which an offender may be confined as punishment for a crime as
10 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
11 crime, or other statute defining the maximum penalty for a crime.

12 (42) "Total confinement" means confinement inside the physical
13 boundaries of a facility or institution operated or utilized under
14 contract by the state or any other unit of government for twenty-four
15 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

16 (43) "Transition training" means written and verbal instructions
17 and assistance provided by the department to the offender during the
18 two weeks prior to the offender's successful completion of the work
19 ethic camp program. The transition training shall include instructions
20 in the offender's requirements and obligations during the offender's
21 period of community custody.

22 (44) "Victim" means any person who has sustained emotional,
23 psychological, physical, or financial injury to person or property as
24 a direct result of the crime charged.

25 (45) "Violent offense" means:

26 (a) Any of the following felonies:

27 (i) Any felony defined under any law as a class A felony or an
28 attempt to commit a class A felony;

29 (ii) Criminal solicitation of or criminal conspiracy to commit a
30 class A felony;

31 (iii) Manslaughter in the first degree;

32 (iv) Manslaughter in the second degree;

33 (v) Indecent liberties if committed by forcible compulsion;

34 (vi) Kidnapping in the second degree;

35 (vii) Arson in the second degree;

36 (viii) Assault in the second degree;

37 (ix) Assault of a child in the second degree;

38 (x) Extortion in the first degree;

1 (xi) Robbery in the second degree;
2 (xii) Drive-by shooting;
3 (xiii) Vehicular assault, when caused by the operation or driving
4 of a vehicle by a person while under the influence of intoxicating
5 liquor or any drug or by the operation or driving of a vehicle in a
6 reckless manner; and

7 (xiv) Vehicular homicide, when proximately caused by the driving of
8 any vehicle by any person while under the influence of intoxicating
9 liquor or any drug as defined by RCW 46.61.502, or by the operation of
10 any vehicle in a reckless manner;

11 (b) Any conviction for a felony offense in effect at any time prior
12 to July 1, 1976, that is comparable to a felony classified as a violent
13 offense in (a) of this subsection; and

14 (c) Any federal or out-of-state conviction for an offense that
15 under the laws of this state would be a felony classified as a violent
16 offense under (a) or (b) of this subsection.

17 (46) "Work crew" means a program of partial confinement consisting
18 of civic improvement tasks for the benefit of the community that
19 complies with RCW 9.94A.725.

20 (47) "Work ethic camp" means an alternative incarceration program
21 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
22 the cost of corrections by requiring offenders to complete a
23 comprehensive array of real-world job and vocational experiences,
24 character-building work ethics training, life management skills
25 development, substance abuse rehabilitation, counseling, literacy
26 training, and basic adult education.

27 (48) "Work release" means a program of partial confinement
28 available to offenders who are employed or engaged as a student in a
29 regular course of study at school.

30 NEW SECTION. **Sec. 6.** A new section is added to chapter 72.09 RCW
31 to read as follows:

32 (1) The department must incarcerate an offender convicted of a sex
33 offense in the same building as the general population of the facility
34 in which the offender is incarcerated. The department may not
35 incarcerate an offender convicted of a sex offense in a facility or
36 building, or a subdivision of a facility or building, containing solely
37 offenders convicted of sex offenses.

1 (2) The department may not provide sex offender treatment to an
2 offender who is sentenced to life without the possibility of release,
3 unless such treatment was imposed by a court of competent jurisdiction
4 as a condition of the offender's sentence.

5 (3) When the department provides sex offender treatment to an
6 inmate, it must do so in the building in which the inmate is
7 incarcerated.

8 (4) For purposes of this section, "sex offense" has the same
9 meaning as in RCW 9.94A.030.

10 **Sec. 7.** RCW 72.09.335 and 2001 2nd sp.s. c 12 s 305 are each
11 amended to read as follows:

12 The department shall provide offenders sentenced under RCW
13 9.94A.712 with the opportunity for sex offender treatment during
14 incarceration. The department shall provide treatment to an offender
15 under this section in the facility in which he or she is incarcerated.

16 NEW SECTION. **Sec. 8.** A new section is added to chapter 72.09 RCW
17 to read as follows:

18 (1) Whenever a superintendent has reason to believe that an inmate
19 has committed a sex offense, the superintendent shall promptly inform
20 the appropriate law enforcement agency and the county prosecutor.

21 (2) The superintendent shall make the notification required under
22 this section regardless of whether administrative sanctions are imposed
23 on the inmate for the behavior in question.

24 (3) For purposes of this section, "sex offense" has the same
25 meaning as in RCW 9.94A.030.

26 NEW SECTION. **Sec. 9.** A new section is added to chapter 72.09 RCW
27 to read as follows:

28 (1) The department may not provide an inmate convicted of a sex
29 offense with, or allow such an inmate to purchase, medications for the
30 purpose of enhancing sexual performance or alleviating or curing sexual
31 dysfunction.

32 (2) For purposes of this section, "sex offense" has the same
33 meaning as in RCW 9.94A.030.

1 NEW SECTION. **Sec. 10.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 immediately, except for section 5 of this act, which takes effect July
9 1, 2006.

10 NEW SECTION. **Sec. 12.** Section 4 of this act expires July 1, 2006.

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